

### REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 31 and 32 have been amended. The claim amendments are supported by at least the originally filed claims and Figures 2, 5, 6 and 8-10 of the present application. No new matter has been added.

#### § 102 Rejection

Claims 1, 26, 28, 29, 31, 32 and 33 were rejected under 35 U.S.C. § 102(b) as being anticipated by Campbell (U.S. 6,216,687). Applicants respectfully traverse this rejection.

Campbell discloses several fireplace embodiments that each include a firebox positioned within an outer enclosure. A plenum (e.g., bottom plenum 46, back plenum 48 and top plenum 50) is defined between the firebox and outer enclosure. A fan draws air into the plenum, heat generated in the firebox is transferred into the circulating air, and the heated air is then discharged into the room in which the fireplace resides. The focus of the Campbell reference is providing a way to remove unwanted combustion products from the air discharged from the firebox so that the air from within the firebox can be exhausted into the room or another location via a vent pipe with the contaminants removed. Campbell discloses a catalyst element in the exit passageway from the firebox that oxidizes carbon monoxide and filters particulates from the air leaving the firebox that would otherwise be released into the ambient air. The catalyst element is positioned on top of the firebox between the plenum and the firebox (see Figures 1, 3 and 6 of Campbell) or in an exhaust duct at an outlet of the firebox (see Figures 9 and 10 of Campbell).

Campbell fails to disclose a "filter disposed within the plenum," as required by claims 1, 32 and 33, or disposing or positioning the filter within the plenum, as required by claims 28 and 31, for the purpose of filtering the air drawn into or otherwise within the plenum. One primary purpose of the claimed invention is to filter ambient air within a living space with the option of heating the air via the heating appliance (e.g., fireplace) plenum system while filtering. The claimed invention eliminates the need for a separate stand-alone filter device such as the device described by Morrow (US 5,656,242). As discussed above, the catalyst element disclosed by Campbell is used to oxidize and filter combustion products from air that is within the firebox, not

the air drawn into or otherwise within the plenum. Therefore, Campbell fails to disclose every limitation of claims 1, 28, 31, 32 and 33, and the claims that depend from them.

#### § 103 Rejections

Claims 1, 26, 28, 29, 31, 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Campbell in view of Myrick (U.S. 6,666,206). Applicants respectfully traverse this rejection.

Campbell fails to disclose or suggest every limitation of claims 1, 28, 31, 32 and 33 for at least those reasons discussed above. Myrick fails to remedy the deficiencies of Campbell as it relates to claims 1, 28, 31, 32 and 33. Myrick discloses a fireplace insert used within a firebox of the fireplace to capture some of the heat generated by the heat source and direct that heat into a living space within which the fireplace resides. The insert defines a continuous air conduit 22 having intake, base and outtake channel portions 28, 30, 32. The insert includes filters 42, 46 mounted to respective inhaling and exhaling ends 24, 26 of the conduit. Myrick explains at col. 4, lines 29-30 that "the outtake air filter 46 will thereby prevent undesired debris from passing through the conduit." Myrick provides no further disclosure or suggestion of the purpose and function of the filters 42, 44 than to prevent undesired debris from passing through the conduit.

Myrick fails to disclose or suggest a "filter disposed within the plenum," as required by claims 1, 33, disposing or positioning the filter within the plenum, as required by claims 28 and 31, or "a filter disposed within the plenum at a position along the airflow path between inlet and outlets to the plenum," as required by claim 32, for the purpose of filtering the air. The filters 42, 44 disclosed by Myrick are positioned on ends of the conduit 22 and are not positioned within the conduit. Furthermore, if the filters 42, 44 were positioned within the conduit, then undesired debris would be passing through at least a portion of the conduit, which would be contrary to the intended objective of the Myrick disclosure. Thus, Myrick teaches away from disposing, positioning, or positioning a filter within a plenum. Therefore, the combination of Campbell and Myrick fails to disclose or suggest every limitation of claims 1, 28, 31, 32 and 33 and the claims that depend from them.

Further to the above, the filters 42, 46 disclosed by Myrick appears to be necessary in view of the positioning of the fireplace insert 10 within the firebox of the fireplace. It is well known that significant debris, soot, and other combustion product reside in a firebox, especially during combustion of a fibrous product like the wood shown in Figures 1 and 2 of Myrick when the fireplace insert 10 would typically be running. The filters 42, 46 would reduce the amount of such debris being drawn through the conduit and then exhausted into the living space. The claimed invention does not address this condition because the claimed plenum is defined between the firebox and the outer enclosure, which is at a location spaced apart from the debris that exists within the combustion chamber of the fireplace. Thus, Myrick is addressing a different problem with a different solution from the problem and solution addressed by the claimed invention.

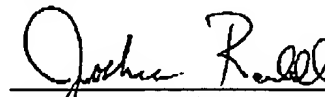
Claims 27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Campbell in view of Myrick, or Campbell in view of Myrick and further in view of Morrow (U.S. 5,656,242). Applicants respectfully traverse this rejection. As discussed above, Campbell and Myrick fail to disclose or suggest every limitation of claims 1 and 28. Morrow fails to remedy the deficiencies of Campbell and Myrick as they relate to claims 1 and 28. Therefore, claims 27 and 30 are allowable for at least the reason they are dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

In view of the above, Applicants respectfully request reconsideration of the application in the form of a Notice of Allowance. If a phone conference would be helpful in resolving any issues related to this matter, please contact Applicants' attorney listed below at 612.371.5387

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
612.332-5300

Date: July 21, 2005

  
Joshua N. Randall  
Reg. No. 50,719  
JNR:ae